



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Indian Business & Technologies Corporation

File: B-238470

Date: May 25, 1990

Pete Homer, Jr., for the protester.
Justin P. Patterson, Esq., Office of the Solicitor,
Department of the Interior, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest alleging awardee was provided an undue competitive advantage because it had submitted unsolicited proposals which in part formed the basis for a competitive procurement is dismissed where the protester was fifth in line for award and is, therefore, not an interested party to protest.

DECISION

American Indian Business & Technologies Corporation protests the award of a contract to the Council for Tribal Employment Rights under request for proposals (RFP) No. BIA-M00-89-19, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, as a "Buy-Indian" set-aside for the preparation of a workbook concerning road projects on Indian reservations and for related training services. The protester alleges that the awardee was provided an undue competitive advantage by virtue of the agency's consideration of its earlier unsolicited proposals on the subject.

We dismiss the protest.

In 1988 the Council submitted several unsolicited proposals to BIA to promote employment and economic development on Indian reservations with particular regard to road construction. While these proposals received initial favorable review by the agency's Bureau of Transportation Assistance, the contracting officer determined that a

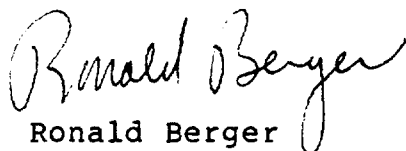
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non-competitive award to the Council could not be justified since the proposals did not involve unique products or services and since other Indian-owned firms were capable of performing this type of work.

On May 26, 1989, BIA issued an RFP with a statement of work which was similar in some respect to that contained in the Council's earlier proposals. Six firms, including the protester and the awardee, submitted offers. Discussions were held with all six offerors and best and final offers were then submitted. The final combined technical/cost evaluation resulted in American's being ranked fifth; the Council was ranked first. The protester does not dispute the final weighted rankings;^{1/} rather, American suggests that BIA's earlier deliberations with the Council concerning its unsolicited proposals gave the awardee an undue competitive advantage and infers that these deliberations indicate impropriety on the part of the agency.

Our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1990), require that a party be "interested" before we will consider its protest. A protester is not interested where it would not be in line for award if its protest were upheld. Sparton Defense Electronics, B-237396, Nov. 6, 1989, 89-2 CPD ¶ 432. Based on the evaluation results, American is fifth in line for award behind the Council and three other offerors; among this group, its technical ranking is third and its proposed costs are the highest. American has only challenged the Council's eligibility for award and, thus, even if its protest were sustained, it would not be in line for award. Accordingly, the protester is not an interested party to protest the award to the Council. Id.

The protest is dismissed.



Ronald Berger
Associate General Counsel

^{1/} American states that the Council may have been evaluated on the basis of an optional training schedule different from that proposed by other offerors; however, the record reflects that all offerors were evaluated on the basis of the same training schedule even though the Council was awarded a contract calling for an alternative schedule as permitted by the RFP.